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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,989	09/26/2001	Roland N. Walker	12160.2	2969

21999 7590 06/27/2005

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EXAMINER

BAHTA, ABRAHAM

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 06/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/964,989

Applicant(s)

WALKER, ROLAND N.

Examiner

Abraham Bahta

Art Unit

1775

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 1-10, 16-20, 25 and 31-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 11-15, 21-24 and 26-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claims 1-34 are pending in this application. Claims 1-10 and 16-20 are withdrawn from further consideration as being drawn to a non-elected invention.

Further, the amendment filed 03/22/04 indicates that claims 25 and 31-34 (previously examined) are now withdrawn.

Claim Objections

Claims 11 and 24 contain terms that are internally inconsistent. It appears that applicant intends to refer to each of the flowers in the group of flowers. Therefore, the following suggestion is made for claim 11. On line 3 delete the phrase "group of" (second occurrence). On line 6 delete the phrase "the group of".

The following suggestion is made for claim 24: On line 3 delete the phrase "group of" (second occurrence). On line 6 delete the phrase "the group of".

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The term "overlay" as recited in claims 11 has no support in the specification.

Claim Rejections - 35 USC § 112

Claims 11 and 24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed,

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had possession of the claimed invention. On page 7, line 21 through page 8, line 2 the specification recites the image may be provided onto an organic product in variety of manners, for example, the images may be printed, painted, sprayed, copied, transferred, etched, embossed, engraved, scratched, stamped, cut, imprinted, scored, carved or otherwise marked into at least a portion of an organic product; however, claims 11 and 24 recite each of the group of flowers is free from etching and laser exposure and pressure. The applicant is reminded that a negative limitation recited in the present claims, which did not appear in the specification as filed, introduce new concepts and violate the description requirement of the first paragraph of 35 US 112, (*In re Anderson*, 471 F. 2d. 1237, 176 USPQ 331 (CCPA 1973)). There is no clear support for this negative limitation.

Claim Rejections - 35 USC § 112

Claims 11-15, 21-24 and 26-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 11, line 5 the term "image" (second occurrence) lacks antecedent basis. As best understood the image is printed on the overlay and therefore, the overlay (pad-printed with the image) is overlaid on each of the flowers.

Claim 13 is unclear. The claim which depend on claim 11 recites the image has been pad-printed; however, as best understood the image is printed on an overlay and the overlay transferred onto the flower as stated in claim 11. Correction is requested.

Claim 24 is confusing. The claim on line 4 recites "each of the group of flowers has its petals detached" and on lines 5-6 the it is recited "the image is overlaid on each of the group of said flowers"; however, it is not clear how an image is overlaid on a flower after its petal has been detached or removed because a flower with its petals detached is not a flower. Correction is requested.

Response to Applicant's Argument's/Remarks

The applicant admits that the words "free from etching and laser exposure and pressure" are not expressly included in the specification; however, argues that the negative limitation recited in the claims merely specified a characteristic of some of the embodiments taught or discussed in the original specification and cites an example that painting an image is inherently free from etching and laser exposure and pressure. Examiner contends that negative limitation recited in the claims of the subject application do not appear in the specification as filed and in fact introduce new concepts and violate the description requirements of the first paragraph of 35 USC 112. The specification on page 7, line 21 through page 8, line 2 in fact expressly states that the image may be provided onto the organic product by etching, scratching, cutting, embossing, scoring and carving which require pressure. Further, the Examiner contends that the image may be provided on the organic product by laser exposure because the specification on page 8, lines 1-2 states that the image may otherwise be marked into a portion of the organic product. Therefore, the recitation such that "free from etching and laser exposure and pressure" introduces new concept/matter and the applicant is requested to cancel the new matter in the response to this Office action.

Any inquiry concerning this communication should be directed to Abraham Bahta whose telephone number is (571) 272-1532. The Examiner can normally be reached Monday-Friday from 11:30 AM -8:00 PM (EST).


If attempts to reach the Examiner by telephone are unsuccessful, the examiner supervisor Deborah Jones can be reached on (571) 272-1535. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



A. Bahta

06/14/05



DEBORAH JONES
SUPERVISORY PATENT EXAMINER